

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (CDFA), in order to implement, interpret and make specific section 33227 of the Food and Agricultural Code, proposes to adopt section 480.9 in Title 3, California Code of Regulations (CCR) relating to inspection and permitting of bulk milk tankers, and to amend section 300(c)(1) relating to timeframes for permit review and issuance.

PUBLIC HEARING: CDFA will hold a public hearing commencing at 1:00 p.m. on Wednesday, December 12, 2001, in Room 102, Food and Agriculture Building, 1220 N Street, Sacramento, California. The hearing room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. CDFA requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD: Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed action to CDFA no later than 5:00 p.m., on December 10, 2001, which is hereby designated as the close of the written comment period. Submit comments to:

Kristen Dahl, Dairy Program Coordinator
Milk and Dairy Foods Control Branch
California Department of Food and Agriculture
1220 N Street, Room A-170
Sacramento, CA 95814

Written comments via electronic mail are encouraged, sent to kdahl@cdfa.ca.gov. Written comments may also be sent via fax at (916) 654-7512.

AUTHORITY: Sections 401, 407, 32920.5, and 33227 of the Food and Agricultural Code; and Section 15376 of the Government Code.

REFERENCE: Sections 32920.5, 33227, 33519 and 33520 of the Food and Agricultural Code; and Section 15736 of the Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California, and authorizes the Secretary to adopt regulations necessary to carry out provisions of the Food and Agricultural Code (Food and Agricultural Code Sections 401, and 407). Existing law states that every person, before engaging in the transportation of unpackaged market milk or unpackaged market milk products, shall obtain a bulk milk tanker permit from the Secretary (Food and Agricultural Code Section 33227).

Section 480.9. Inspection and Permitting of Bulk Milk Tankers.

This regulation would establish the requirements for milk tanker inspections, and the method of issuing permits for milk tankers. This regulation will meet and implement requirements of US Public Health Service/ Food and Drug Administration ordinances.

Section 300 (c)(1). Amend existing timeframes for permits.

A new permit will be created from the proposed regulation. Under section 15376 of the Government Code (Permit Reform Act, in part), any new or additional permits required by any state agency which issues permits shall adopt/amend regulations regarding their procedures for considering and issuing permits, specifying: (a) a period dating from the receipt of a permit application within which the agency must either inform the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required; (b) a period dating from the filing of a completed application within which the agency must reach a permit decision; and (c) the agency's median, minimum, and maximum times for processing a permit, from the receipt of the initial application to the final permit decision, based on the agency's actual performance during the two years immediately preceding the proposal of the regulation. To establish the deadlines required by the Permit Reform Act, amendment of Section 300(c)(1) is necessary.

California dairy industry representatives, as active participants in the NCIMS process, are well aware of PMO requirements.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department of Food and Agriculture has made the following initial determinations:

Mandate on local agencies and school districts: None

Costs or savings to any state agency: None

Cost to any local agency or school districts which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed upon local agencies: None

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete in other states: The adoption of this regulation may impact businesses hauling bulk milk and milk products in over the road milk tankers and in intermodal tank containers. There are approximately 80 such businesses in California. This regulation will impose a cost related inspection fee of approximately \$172.00 per tanker inspection per year and will be billed to the owner of the tanker after the inspection is conducted. This regulation will ultimately benefit California competitiveness, as tanker permits are required for interstate shipment of bulk milk and milk products. This regulation will not impose reporting requirements. The Department of Food and Agriculture has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals.

Submissions may include the following considerations: (i) the establishment of differing compliance or reporting requirements or timetables to take into account the resources available to businesses; (ii) consolidation or simplification of compliance and reporting requirements for business; (iii) the use of performance standards rather than prescriptive standards; (iv) exemption or partial exemption from the regulatory requirements of businesses.

Cost impact on representative private person or business: This regulation will affect individuals who own bulk milk tankers. This regulation will impose a cost related inspection fee of approximately \$172.00 per tanker inspection per year and will be billed to the owner of the tanker after the inspection is conducted.

Adoption of this regulation will not:

- (1) create or eliminate jobs within the State of California;
- (2) create new businesses or eliminate existing businesses within the State of California; or
- (3) affect the expansion of businesses currently doing business in California.

Significant effect on Housing Costs: None.

Small Business Determination:

The Department of Food and Agriculture has determined that the adoption of this regulation may affect small business. This regulation will impose a cost related inspection fee of approximately \$172.00 per tanker inspection per year and will be billed to the owner of the tanker after the inspection is conducted.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), CDFA must determine that no reasonable alternative it considered or that has been identified and brought to the attention of CDFA would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CDFA invites interested persons to submit written statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS: Inquiries concerning the substance of the proposed administrative action may be directed to:

Kristen Dahl, Dairy Program Coordinator
Milk and Dairy Foods Control Branch
California Department of Food and Agriculture
1220 N Street, Room A-170
Sacramento, CA 95814
Telephone: (916) 654-1981.

The backup contact person for these inquiries is:

Lee Jensen, Chief
Milk and Dairy Foods Control Branch
California Department of Food and Agriculture

1220 N Street, Room A-170
Sacramento, CA 95814
Telephone: (916) 653-6681

Please direct requests for copies of the text (the "express terms") of the proposed regulations, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Dahl at the above address.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

An initial statement of reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. CDFA will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at the address listed above. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the initial statement of reasons, the finding of emergency and the proposed text of the regulation. In addition, the above-cited materials may be accessed on CDFA's website at www.cdfa.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all relevant comments received, CDFA may adopt the proposed regulations substantially as described in this notice. If CDFA makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before CDFA adopts the regulations as revised. Any such modifications will also be posted on CDFA's website. Please send requests for copied of any modified regulations to the attention of Ms. Dahl at the address indicated above. CDFA will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.